IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1139 OF 2005

Shri Balu Motiram & Ors. ..Petitioners.
Versus
Union of India & Anr. ..Respondents.

ALONGWITH
WRIT PETITION NO.1140 OF 2005

Pradeep Kumar Kunjilal & Ors. ..Petitioners.
Versus
Union of India & Anr. ..Respondents.

ALONGWITH
WRIT PETITION NO.2176 OF 2005

Ashok Dashrath More ..Petitioner.
Versus
Union of India & Anr. ..Respondents.

Mr. S. V. Marne for the Petitioners.
Mr. T. J. Pandian for the Respondents.

CORAM: A. P. SHAH AND
S.J. VAZIFDAR, JJ.
DATE : 14TH JULY, 2005

P.C.

1. Rule. By consent rule made returnable forthwith and taken up for hearing in the above three petitions.

2. It is agreed that the decision in Writ Petition No. 1139 of 2005 will govern the decision in the other writ petitions. We shall

therefore refer to the facts in Writ Petition No. 1139 of 2005.

3. Respondent No. 1 is the Union of India sued through the General Manager, Central Railway. Respondent , No. 2 is the Divisional Railway Manager. The petitioners were at the material time casual labourers employed by the Respondents for various periods.

4. The petitioners have challenged an order dated 24th December 2004 passed by the Central Administrative Tribunal. The petitioners have also sought a Writ of Mandamus directing the Respondents to regularise their services, with effect from June 2003 with all consequential benefits. By the impugned order the Central Administrative Tribunal dismissed the petitioners Original Application filed before it by which the petitioners challenged the Respondents action in refusing to regularise their services and also sought regularisation of their services.

5. As we intend remanding the matter, it is necessary for us to state the facts only briefly. Admittedly, the Respondents by an order/circular dated 9th October 1998, sought to regularise casual labourers. The impugned order dealt with eleven cases divided into three categories. The petitioners case fell into the first category of five

cases in which the names of the petitioners were admittedly, on the live register. The conditions necessary for entitling casual labourers to seek such regularisation were modified from time to time by various circulars. Suffice it to state that the petitioner's application for regularisation was dismissed on the basis that their applications were barred by limitation and that though the Petitioners' names were on the live register the Petitioners did not comply with one of the conditions viz. they had not completed 120 days of casual service.

6. It is admitted that the records pertaining to the petitioners had been destroyed by the Respondents and are therefore no longer available. It appears that the Respondents had pursuant to certain internal directions, decided not to keep the records beyond the period of five years. Be that as it may, the fact is that the original records pertaining to the petitioners employment details are now not available. In these circumstances, the only evidence available, was that produced by the petitioners, namely, their casual labour cards. It is important to note two things at this stage. Firstly, that the casual labour cards were issued is not denied. Secondly, these cards bear the stamp of the person incharge, under whom Petitioners had

worked. The Respondents, however, relied upon an inspection report, prepared at their instance which opined that the petitioners had not put in 120 days of service.

7. In support of their contention that they had completed 120 days of casual service the petitioners relied upon the casual labour cards issued to each of them. The cards indicated that the petitioners had worked for over 120 days. However, the Tribunal did not consider the casual labour cards on the ground that the same did not conform to the specifications/instructions contained in a circular dated 23rd of February 1990 , which inter - alia provides that the casual labour cards should contain cross-references to the serial number of the individual concerned in the live register, and the number in the LTI Register.

8. We are entirely in agreement with the Tribunal that the various instructions/circulars issued by the Respondents from time to time were with a view to avoid bogus applications for regularisation. We are, however, unable to ascertain, in what manner and from when the directions in the circular dated 23rd February 1990 were to be complied with. Were previous casual labour cards also to be

regularised in that manner? Were the 120 days during which the Petitioners allege to have worked, prior to or after the said circular? These are some of the questions , which in our opinion are important to be determined before arriving at the conclusion as to whether the casual labour cards, which do not bear the said cross-references can be rejected altogether. We have noted the fact that the Tribunal has observed that a number of casual labour cards filed before it indicated the cross-references. However, the period specified in such cards is not mentioned.

9. It is pertinent to note that the casual labour cards were issued and maintained under the provisions of paragraph 2513 of the Indian Railway Establishment Manual, which provides for casual labour cards. This format does not contain any provision for writing the number of the live register and the left hand tumble impression number. In these circumstances, it is important to see whether the 120 days on which the Petitioners allege to have worked pertained to the period prior or subsequent to the said circular dated 23rd February 1990. It is necessary, therefore, for the tribunal to ascertain from all the surrounding circumstances, whether the casual labour card and

what is contained therein are valid or not. One of the pieces of evidence is the casual labour card itself. It cannot be rejected, merely on the ground that it does not contain the cross-references referred to earlier unless it is established that the said cross references were mandatory. Nothing to that effect was brought to our notice.

10. The Tribunal shall take into consideration the casual labour cards. We do not express any opinion on either the validity of the cards or the contents thereof.

11. The Tribunal also held that the Petitioners had claimed the said reliefs after a long gap and that the applications are therefore barred by limitation. As pointed out by the Petitioners this finding is not supported by any reasons. Further , our attention was also invited to paragraph 35 of the impugned order wherein the Tribunal has specifically held:-

> "However the relaxation provided in the conditions of regularisation by two circulars issued in 2001 will give a fresh cause of action to both categories , but it will be limited to those who were fulfilling other conditions for regularisation and have become eligible only on account of either circular dated 21 .1.2000 which provides for a relaxation in educational qualifications or circular dated 20 .9.2 001 , which gives a relaxation in age."

12. The Petitioners were entitled to seek regularisation in view of the 2001 circulars, which changed the period to 120 days. Prima-facie on the basis of the reasoning adopted by the Tribunal in paragraph 35 the original applications are within time. However, as no reasons have been furnished by the Tribunal for the finding that the applications were barred by limitation and as we are remanding the matter the ends of justice would be met if this question is also decided afresh by the Tribunal.

13. In the circumstances, the matter is remanded to the Central Administrative Tribunal to decide the matter regarding the Petitioners eligibility for regularisation afresh.